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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARL R. JACOBS and JACQUELINE COLLINS

Appeal 2007-4391
Application 10/043,699
Technology Center 3600

Decided:¹ June 23, 2008

Before HUBERT C. LORIN, LINDA E. HORNER, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jacobs, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

¹ An oral hearing was conducted on June 10, 2008.

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

The claimed invention relates to a fuel dispenser that displays information to a customer. (Spec. 2:5-6.)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A fuel dispensing system, comprising:
fuel dispensing equipment;
a user interface;
a display; and
a controller operably coupled to the fuel dispensing equipment, the user interface, and the display, the controller adapted to determine a manner in which a user will pay to dispense fuel and to display information on the display as a function of the manner in which the user will pay to dispense fuel;
wherein at least a portion of the display information is unrelated to the manner in which the user will pay to dispense fuel.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Struthers US 2003/0075600 A1 Apr. 24, 2003

² Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Jan. 12, 2006), Reply Brief ("Reply Br.," filed Jun. 7, 2006), and the Examiner's Answer ("Ans.," mailed Apr. 7, 2006).

THE REJECTION

The following rejection is before us for review:

Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Struthers.

THE ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-24 as being anticipated by Struthers. This issue turns on whether Struthers describes the type of information displayed and its relationship to the manner a user would pay to dispense fuel as claimed.

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Struthers describes a reconfigurable fuel dispenser interface. (Struthers ¶ 0002.) The fuel dispenser includes a means for dispensing fuel, means for displaying objects, and means for accepting payment. (Struthers ¶ 0046.) The fuel dispenser includes small, removable plug-in circuit cards. (Struthers ¶ 0047.) In addition, the fuel dispenser includes a graphical user interface, displays, display

- interface screens or interface screens, whereby the customer is presented and executes transaction opportunities. (Struthers ¶ 0048.)
2. Struthers describes the dispenser's graphical user interface can be reconfigured by the fuel and retail marketers or by the customer. (Struthers ¶ 0049.) Fuel and retail marketers can tailor the content and sequence of the display's interface screens: to capitalize on purchasing habits of diverse segments of the consumer population, to change price points instantaneously, to customize language options, to provide daily promotions, and to provide customer specific marketing such as lottery promotions for frequent lottery players, service and merchandise promotions, and customer loyalty programs. (Struthers ¶ 0049.) The customer can reconfigure, to a limited extent, the content of the interface screens to include customized personal greetings and individualized loyalty purchase reports. (Struthers ¶ 0058.)
 3. Struthers describes the activation of the customer's modified content of the interface screens occurs when the customer inserts his or her identification information through the use of credit or debit cards, voice recognition, finger swipe, or key tag. (Struthers ¶ 0058.)
 4. Struthers describes once the customer enters his or her identification data, by using the preexisting customer preference or sales history obtained from marketing databases, the interface screens can be immediately reconfigured to display products or services based on the customer's preferences or sales history. (Struthers ¶ 0059.) A

particular embodiment in Struthers describes using a customer's like of chocolate as an example of using a customer's preference or sales history in order to display products or services. (*Id.*) Struthers describes the system is queried for the customer's preferences. The database in the system indicates the customer likes chocolate. The system sends data to the fuel dispenser to reconfigure the display interface screens to display candy bar advertisements, photographs of candy bars, candy manufacturer's logo, etc. (*Id.*)

PRINCIPLES OF LAW

Claims define that which Appellants regard to be their invention. *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). However, "[t]he law of anticipation does not require that the reference 'teach' what the subject patent teaches. Assuming that a reference is properly 'prior art,' it is only necessary that the claims under attack, as construed by the court, 'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it." *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

With this as background, we analyze the specific rejection made by the Examiner of the claims on appeal.

ANALYSIS

The Appellants argue claims 1 through 24 as a group. (App. Br. 3-4.) We select claim 1 as a representative claim, and claims 2-24 will stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellants contend the Examiner has failed to find that any of the information displayed on the fuel dispenser is displayed “*as a function of the manner in which the customer will pay*, much less that information unrelated to the manner in which a customer will pay to dispense fuel is displayed as a function of the manner in which the customer will pay” and submit Struthers’ information that is “unrelated to the manner in which the customer will pay to dispense fuel is displayed *regardless* of the manner in which the customer will pay.” (App. Br. 3-4.) (Emphasis original.) (See also Reply. Br. 1.) The Appellants further contend that in Struthers the “only information that is displayed as a function of the manner in which the customer will pay is information *directly related* to the manner in which the customer will pay.” (App. Br. 4.) (Emphasis original.)

The Examiner found that Struthers describes all of the limitations of claim 1 including “the controller adapted to determine a manner in which a user will pay to dispense fuel and to display information on the display as a function of the manner in which the user will pay to dispense fuel; wherein

at least a portion of the displayed information is unrelated to the manner in which the user will pay to dispense fuel.” (See Ans. 3-4.)

Struthers describes a reconfigurable fuel dispenser interface. (Fact 1.) Struthers describes its fuel dispenser includes a means for dispensing fuel, means for displaying objects, and means for accepting payment. (*Id.*) Struthers describes the fuel dispenser includes small, removable plug-in circuit cards. (*Id.*) Struthers describes the fuel dispenser includes a graphical user interface whereby the customer is presented and executes transaction opportunities. (*Id.*) We find the claimed limitations of a fuel dispensing system having fuel dispensing equipment, a user interface, a display, and controller operably coupled to the dispensing equipment, interface, and display are fully met by these descriptions within Struthers.

The Examiner and Appellants disagree as to whether Struthers describes the type of information displayed and its relationship to the manner a user would pay to dispense fuel, i.e., the information displayed is a function of the manner the customer will pay to dispense fuel and wherein a portion within this set of information is unrelated to the manner the customer will pay to dispense fuel.

Struthers describes the dispenser’s interface can be reconfigured by the fuel and retail marketers or by the customer. (Fact 2.) Struthers describes the fuel and retail marketers can tailor the content and sequence of the interface screens: to capitalize on purchasing habits of diverse segment of the consumer populations, to change price points instantaneously, to customize language options, to provide daily promotions, and to provide

customer specific marketing such as lottery promotions for frequent lottery players, service and merchandise promotions, and customer loyalty programs. (*Id.*) Struthers describes the customer can reconfigure, to a limited extent, the content of the interface screens to include customized personal greetings and individualized loyalty purchase reports. (*Id.*) Struthers describes activation of the customer's modified content of the interface screens occurs when the customer inserts his or her identification information through such objects as credit or debit cards, voice recognition, finger swipe, or key tag. (Fact 3.) Struthers describes once the customer enters his or her identification data, by using the preexisting customer preference or sales history obtained from marketing databases, the interface can be immediately reconfigured to display products or services based on the customer's preferences or sales history. (Fact 4.)

With Struthers, the customer would insert, for example, his or her credit or debit card, and the controller within the fuel dispenser would determine whether the customer is paying to dispense fuel by credit or debit by virtue of whether a credit or debit card was inserted. Once the customer's credit or debit card is inserted the customer is now identified by the fuel dispensing system described in Struthers. (See Fact 3.) Upon identification of the customer and the customer having provided customer preferences or the system having the customer's sales history, the interface would display name, method of payment, and products or services of interest to the customer based upon either the customer's preferences or the customer's sales history. (See Fact 4.) The credit or debit card information is the information on the display interface screens that is a function of the manner

in which the user will pay to dispense the fuel. (See Fact 1.) The products or services of interest offered and displayed to the customer on the display interface screens based on the customer inserting his or her debit card is the portion of the information displayed that is unrelated to manner in which the user will pay to dispense the fuel notwithstanding the information displayed is a function of the manner in which the user will pay for the fuel because this portion of information would not have been displayed unless the customer used his or her credit or debit card. (See Fact 4.)

Struthers uses chocolate as an example of using a customer's preference or sales history in order to display products or services of interest to a customer after the customer is identified as a customer whose preference or sales history indicate a preference for chocolate. (See Fact 4.) The system in Struthers obtains sales history about a customer's preference for chocolate. The customer stops at the fuel dispenser. The customer inserts his or her credit or debit card. The system is queried for the customer's preferences. The database in the system indicates the customer likes chocolate. The system sends data to the fuel dispenser to reconfigure the display interface screens to display candy bar advertisements, photographs of candy bars, candy manufacturer's logo, etc. (*Id.*) As such, Struthers describes the fuel dispenser determining the manner the customer will pay to dispense the fuel, credit or debit, display information on the display as a function of the manner in which the user will pay to dispense fuel, i.e., the customer's name, method of payment, and products or services, and wherein at least a portion of this display information is unrelated to the manner in which the customer will pay to dispense the fuel, i.e., the products or

services offered to the customer are unrelated to the manner of paying for the fuel, and still are a function of the manner for paying for the fuel because these products and services would not have been shown to the customer unless the customer chose to pay with his or her credit or debit card. In other words, from the description in Struthers of the fuel dispensing system therein, if the customer chooses to pay by cash, check, vouchers, or coupons, no information with respect to products or services of interest would be displayed.

Accordingly, we find Struthers' description of the fuel dispensing system being able to query the method of payment and having reconfigurable display interface screens by both the fuel and retail marketers and the customer and how the system can query and receive information based on customer's preferences or sales history and then present information on products and services to the customer at the fuel dispenser based on the customer's preferences or sales history retrieved from the database within the system satisfies the limitations of the controller able to determine the manner in which the customer will pay to dispense fuel and to display information as a function of the manner in which the user will pay to dispense fuel, wherein some portion of the displayed information is unrelated to the manner in which the user will pay to dispense the fuel.

Accordingly, the Appellants have not persuaded us of error in the Examiner's rejection.

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1-24 under 35 U.S.C. § 102(e) as anticipated by Struthers.

DECISION

The decision of the Examiner to reject claims 1-24 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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